Supreme Court, U.S.
FILED
JUL 18 2005
OFFICE OF THE CLERK

No. _____

05-109

In The Supreme Court of the United States

CHARLES M. IVEY, III, Trustee for the bankruptcy estate of J.G. Furniture Group, Incorporated,

Petitioner,

v.

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

Charles M. Ivey, III
Counsel of Record
John M. Blust
IVEY, McCLELLAN,
GATTON & TALCOTT, L.L.P.
121 South Elm Street
Post Office Box 3324
Greensboro, North Carolina 27402
(336) 274-4658

Counsel for Petitioner

THE LEX GROUP DC • 1750 K Street, NW • Suite 475 • Washington, DC 20006
(202) 955-0001 • Fax: (202) 955-0022 • www.thelexgroupdc.com

QUESTIONS PRESENTED

I. WHETHER THE EMPLOYEE BENEFIT PLAN PRIORITY PROVIDED BY 11 U.S.C. SECTION 507(a)(4) CAN BE ASSERTED BY A THIRD-PARTY PROVIDER OF INSURANCE TO A DEBTOR.

II. WHETHER THE TERM "SERVICES RENDERED" AS USED IN 11 U.S.C. SECTION 507(a)(4)(A), IS LIMITED TO SERVICES RENDERED BY EMPLOYEES OF THE DEBTOR.

PARTIES TO THIS PROCEEDING

All parties to this proceeding are set forth in the caption.

CORPORATE DISCLOSURE STATEMENT

The Petitioner, Charles M. Ivey, III, is the Trustee in bankruptcy for J.G. Furniture Group, Inc., which was a Delaware corporation which had no parent corporation. No publicly-held company held 10% or more of the stock of J.G. Furniture, Inc.

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

PARTIES TO THIS PROCEEDING ii

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

CITATIONS TO OFFICIAL REPORTS OF OPINIONS 1

JURISDICTIONAL STATEMENT 1

STATUTORY PROVISION INVOLVED 2

STATEMENT OF THE CASE 3

ARGUMENT 6

I. THIS COURT SHOULD RESOLVE THE SPLIT AMONG THE CIRCUITS AS TO WHETHER THE PRIORITY AFFORDED BY 11 U.S.C. SECTION 507(a)(4) CAN BE ASSERTED BY THIRD PARTY PROVIDERS OF INSURANCE COVERAGE TO DEBTORS. 6

II. THE IMPACT OF THE ISSUE PRESENTED BY THIS PETITION IS IMPORTANT AND FAR-REACHING TO NUMBEROUS PERSONS AND ENTITIES 9

A. Potential to Affect Entities 9

B. Likelihood of Causing Forum Shopping 9

C. Major and Uneven Economic Impact on Commerce 10

III. THERE IS A NEED TO PREVENT AN IMPERMISSIBLE EXPANSIVE READING OF THE PRIORITIES OF THE BANKRUPTCY CODE. 12

CONCLUSION 13

APPENDIX

TABLE OF AUTHORITIES

PAGE(S)

Cases

Allegheny Int'l Inc. v. Metro Life Ins. Co.,
145 B.R. 820 (W.D.Pa. 1992) 7

Charles M. Ivey, III v.
Great-West Life & Annuity Ins. Co.
(In re J.G. Furniture Group, Inc.),
405 F.3d 191 (4th Cir. 2005) 8

Edward W. Minte v.
Franey & Parr (In re Edward W. Minte Co.),
286 B.R. 1 (Bankr. D.D.C. 2002) 6

Employees Ins. of Wausau v. Plaid Pantries, Inc.,
10 F.3d 605 (9th Cir. 1993) 7

Employers Ins. of Wausau, Inc. v. HLM Corp.
(In re HLM Corp.),
62 F.3d 224 (8th Cir. 1995) 6

Ford Motor Credit Company v. Dobbins,
35 F.3d 860 (4th Cir. 1994) 5

Hartford Underwriters Insurance Co. v.
Union Planters Bank,
530 U.S. 1, 120 S. Ct. 1942,
147 L. Ed. 2d 1 (2000) 12

In re A.B.C. Fabrics of Tampa, Inc.,
259 B.R. 759 (Bankr. M.D.Fla. 2001) 7

In re Allentown Moving & Storage,
214 B.R. 761 (E.D.Pa. 1997) 6

In re Arrow Carrier Corp.,
154 B.R. 642 (Bankr. D.N.J. 1993) 6

In re Braniff, Inc.,
218 B.R. 628 (Bankr. M.D.Fla. 1998) 7

In re Howard Delivery Service, Inc.,
403 F.3d 228 (4th Cir. 2005) 7

In re Integrated Health Services, Inc.,
291 B.R. 611 (Bankr. D.Del. 2003) 7

In re Perk Development Corp., Brambury Associates,
246 B.R. 753 (Bankr. W.D.N.Y. 2000) 6

In re Saco Local Development Corp.,
711 F.2d 441 (1st Cir. 1983) 7, 11

Official Creditors' Comm. of Lummus Indus., Inc. v. Blue Cross & Blue Shield of Ga., Inc. (In re Lummus Indus., Inc.),
193 B.R. 615 (Bankr. M.D.Ga. 1996) 7

Official Labor Creditors' Comm. v. Jet Fla. Systems, Inc. (In re Jet Fla. Systems, Inc.),
80 B.R. 544 (S.D.Fla. 1987) 7

Principal Mut. Life Ins. Co. v. Joint Comm. of Unsecured Creditors (In re Cirrus Corp.),
196 B.R. 76 (S.D.Tex. 1996) 7

State Ins. Fund v. Southern Star Foods, Inc. (In re Southern Star Foods, Inc.),
144 F.3d 712 (10th Cir. 1998) 6

Travelers Prop. Cas. Corp. v.
Birmingham-Nashville Express, Inc.
(In re Birmingham-Nashville Express, Inc.);
224 F.3d 511 (6th Cir. 2000) 6

Statutes

11 U.S.C. § 507(a) 13

11 U.S.C. § 507(a)(4) ..... *passim*

11 U.S.C. § 507(a)(7) 11

11 U.S.C. § 507(a)(8) 11

11 U.S.C. § 1129 10

28 U.S.C. § 1254(1) 1

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

COMES NOW Charles M. Ivey, III, Trustee in bankruptcy for J.G. Furniture Group, Inc. (hereinafter "J.G. Furniture"), petitioner herein, and respectfully represents that he is aggrieved by the final judgment of the United States Court of Appeals for the Fourth Circuit entered on April 20, 2005.

CITATIONS TO OFFICIAL REPORTS OF OPINIONS

The Opinion of the United States Court of Appeals for the Fourth Circuit appears at page App. 1 and is published.

The opinion and order of the United States District Court for the Middle District of North Carolina, appears at page App. 7 and is published.

JURISDICTIONAL STATEMENT

Petitioner seeks this Court's review of a decision entered on April 20, 2005 by the United States Court of Appeals for the Fourth Circuit. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

STATUTORY PROVISION INVOLVED

11 U.S.C. § 507(a)(4)

§ 507. Priorities

(a) The following expenses and claims have priority in the following order:

> (4) Fourth, allowed unsecured claims for contributions to an employee benefit plan—
>
> > (A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only
> >
> > (B) for each such plan, to the extent of—
> >
> > > (i) the number of employees covered by each such plan multiplied by $4,000; less
> > >
> > > (ii) the aggregate amount paid to such employees under paragraph (3) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

STATEMENT OF THE CASE

On April 28, 1996, J. G. Furniture Group, Inc. ("J.G. Furniture") and Great West Life and Annuity Insurance Co. ("Great West") entered into a Services Contract under which Great West obligated itself to perform many of the administrative functions in connection with J.G. Furniture's medical benefits plan ("the Plan"), which covered employees of J.G. Furniture at its facility in Quakertown, Pennsylvania. Great West would receive payment from J.G. Furniture of administrative fees and reimbursement of employee health care claims paid on the Plan's behalf by Great West. The initial Contract extended through April 30, 1997, and was renewed for the Plan year beginning May 1, 1997.

Article 4 of the Services Contract expressly provided:

> Nothing herein will be deemed to constitute Great West a party to the Plan or to confer upon Great-West any authority to control respecting management of the Plan, authority or responsibility in connection with administration of the Plan or responsibility of the terms or validity of the Plan. . . The Contractholder [J.G. Furniture] and Fiduciary further agree that nothing herein will be deemed to impose upon Great-West any obligation to any Employee or Dependent under the Plan.

Contemporaneously with the execution of the Services Contract, Great West and J.G. Furniture entered into a "Stop Loss Contract" for the same term as the Services Contract. Under the Stop Loss Contract, medical claims by employees covered by the Plan were self-funded by J.G. Furniture up to a certain level of benefits to protect J.G.

Furniture from the expense of funding the Plan above the stop-loss level. J.G. Furniture paid Great West a monthly premium for this stop-loss coverage.

Providers of health care services to employees of J.G. Furniture sent claims directly to Great West, which processed and paid those claims in accordance with the Plan. Great West was then entitled to reimbursement by J.G. Furniture up to the stop-loss level for medical claims paid on behalf of J.G. Furniture. The Contract required J.G. Furniture to maintain sufficient funds in a bank account from which Great West was authorized to initiate wire transfers for the reimbursement amount due.

In August of 1997, J.G. Furniture closed its Quakertown, Pennsylvania facility and moved all production to High Point, North Carolina. Most of J.G. Furniture's Pennsylvania employees were terminated, but many continued to send payments to J.G. Furniture pursuant to COBRA to remain covered by its medical benefit plan.

On April 7, 1998, more than 180 days after its former Pennsylvania employees were terminated, J.G. Furniture filed a Voluntary Petition under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Middle District of North Carolina. Charles M. Ivey, III was appointed as the Trustee in this bankruptcy proceeding.

Great West filed a priority claim in the total amount of $27,773.51 under 11 U.S.C. § 507(a)(4) for unpaid administrative fees, unpaid premiums and for unpaid reimbursements from J.G. Furniture for payments Great West made to medical service providers on behalf of former employees of the Debtor and their dependents.